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In the Supreme Court of the United States

OCTOBER TERM, 1957

VICTOR L. DE GRAZIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE [illegible] IN OPPOSITION

[illegible],
Solicitor General,
[illegible],
Assistant Attorney General,
[illegible],
[illegible],
Department of Justice,
Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 854

VICTOR L. DE CASAUS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 1) is reported at 250 F. 2d 150.

JURISDICTION

The judgment of the Court of Appeals was entered on November 22, 1957, and a petition for rehearing was denied on January 14, 1958. On February 10, 1958, pursuant to an order by Mr. Chief Justice Warren, the time for filing a petition for a writ of certiorari was extended to and including March 15, 1958. The petition for a writ of certiorari was filed on March 13, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a false statement to an investigator of the Commodity Credit Corporation constituted a violation of 15 U.S.C. 714m, which punishes false statements for the purpose of influencing action by the Corporation.

2. Whether the trial court erred in its rulings as to the inspection of customs records.

3. Whether there was error in the refusal of the trial court to order the taking of depositions in Mexico during the course of the trial on a matter which had been in issue since the return of the indictment.

4. Whether petitioner was prejudiced by the inadvertent delivery to the jury room of certain exhibits which had been offered in evidence by petitioner himself but which the court had excluded as irrelevant.

STATUTE AND RULES INVOLVED

15 U.S.C., section 714m, paragraph (a), provides:

> Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining for himself or another, money, property, or anything of value, under sections 714-714o of this title, or under any other Act applicable to the Corporation, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment by not more than five years, or both.

Rule 27, F. R. Crim. P., provides:

> An official record or any entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 44, F. R. Civ. P., paragraph (b), provides:

> A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

Rule 15, F. R. Crim. P., paragraph (b), provides:

> The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

STATEMENT

Petitioner was convicted in the District Court for the Southern District of California, Central Division, under Count 4 of an indictment charging violation of 15 U.S.C. 714m(a) (IV, 749).[1] He was sentenced to a fine of $10,000 and imprisonment for one year, execution of the sentence of imprisonment being suspended and petitioner being placed on probation for a period of five years (IV, 799). His conviction was affirmed (Pet. App. 1).

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[1] References to the record are shown by a Roman numeral, indicating the volume, and an Arabic numeral, indicating the page, as there is no consecutive pagination throughout the record. The supplemental record filed by the Government under Supreme Court Rule 21-6 is referred to as "Supp. R."

The charge under Count 4[2] was that on or about November 1, 1954, petitioner knowingly made a false statement to Special Agent Doyle S. Kennedy, an officer of the Department of Agriculture, for the purpose of influencing the action of the Commodity Credit Corporation, an agency of said Department, and for the purpose of obtaining for himself money and property and other things of value. The statement alleged to be false was that, as of October 6, 1954, Casaus, Inc., had exported to Mexico 15,424 cwt. of lima beans, purchased by said company from the Commodity Credit Corporation, when petitioner well knew a much smaller quantity of such beans had been exported (I, 4).

1. The evidence showed that Casaus, Inc., was a family corporation of which petitioner was the general manager and the one who handled all the transactions here in question (Supp. R. 25-26). In such capacity, he purchased lima beans from the Commodity Credit Corporation (referred to as the C.C.C.) under an agreement that they would not be sold on the domestic market but would be exported and proof of exportation furnished. If the purchaser failed to export, he was to pay the domestic price therefor, rather than the reduced price at which they had been sold for the purpose of keeping them off the domestic market (XII, 101, 104-106; Exs. 1, 4;[3] Supp. R. 29-30).

Reports had been received by the Department of Agriculture that export lima beans were reaching the

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[2] Only Counts 2 and 4 were submitted to the jury, the other counts having been dismissed by the Government. The jury returned a verdict of not guilty on Count 2 and a verdict of guilty on Count 4.

[3] All exhibits referred to are Government exhibits.

domestic market, and Special Agent Kennedy was assigned to make an investigation (VI, 93). On November 1, 1954, petitioner stated to Kennedy that, during the period March 10 through June 18, 1954, his company had exported all of the lima beans the company had received under his agreement with the C.C.C.—in the amount of 15,417 bags (each bag a hundredweight) (V, 102, 104).

Although C.C.C. regulations, which were a part of the agreement and understood by petitioner, prohibited commingling export with domestic beans, petitioner had allowed this to be done (Supp. R. 29-30). The Government did not seek to enforce any penalty by reason of such violation, but did prove that, as a result of this commingling, the sum of domestic sales was so large as to make impossible exports in the amount claimed by petitioner. Following are the figures shown by the evidence:

Inventory 2/28/54.....	7,004 cwt. (Ex. 115A)		
Purchase from other than Government sources, 3/1/54 to 9/6/54.....	337 cwt. (Exs. 8, 9)		
Purchases from C.C.C. same period.....	15,417 cwt. (Ex. 124)		
Domestic Sales same period.....		13,656 cwt.	(Exs. 1-23, 46-50)
Balance thus available for export.....		9,102 cwt.	
	22,758 cwt.	22,758 cwt.	

As a matter of mathematical calculation, petitioner's statement that he had exported 15,417 sacks could not have been true because, deducting the proved domestic sales from total stocks, there would be available for export only a balance of 9,102 sacks, some 6,315 sacks short of the number which petitioner claimed to have exported. In other words, at least 6,315 sacks of sur-

plus lima beans were necessarily sold on the domestic market.[4]

Domestic dealers testified as to their purchases during this period from the Casaus company of lima beans concealed as being pintos or white beans (II, 242-245, 276; III, 389, 292, 311-313, 319-320, 324-325, 332; IV, 557). Other deliveries of lima beans, similarly concealed, to domestic purchasers were testified to by truck drivers (III, 343, 355). A search of the company files revealed various false invoices covering up such transactions (V, 109, 115-128; VI, 8-9).

2. During the course of Kennedy's investigation, petitioner wrote him a letter in support of his previous statements that all C.C.C. lima beans had been exported and submitted in connection therewith photostatic copies of documents called "landing receipts", authenticated by a Mexican customs official and purporting to show that the beans in question had been imported into Mexico. With this was submitted the affidavit of petitioner's brother, an officer of both the consignor and consignee companies, that the alleged shipments of beans had been received in full (V, 89-93; Ex. 39).

Jose Jimenez, chief of the import section of the Mexican customs at Mexicali, testified for the Government at the direction of his superiors. He stated that he had compared the alleged photostatic copies of fourteen landing receipts, purporting to show exportation of lima beans to Mexico, and found that eleven of them had no original in the Mexican records, which, he

[4] The Government did not purport to have uncovered all the domestic sales, so the amount of diversion to the domestic market may have been, and probably was, greater.

stated, were complete for that year (II, 147-150). Two deputy collectors of customs from the United States side of the border testified that, if there had been any such exports, record thereof should appear in their office files of shipper's export declarations. A careful search had failed to reveal any such records (III, 361-365, 379-381).

A truck driver for the Casaus company testified to driving a load of beans to Mexico during this period at the direction of petitioner. The export declaration therefor, initialed by petitioner, called for 350 bags of dried large lima beans. The American customs officials, who knew that operations of the Casaus company were under investigation, required the unloading of the truck and found that the only lima beans in this load were placed in a layer of twenty bags at the back of the van truck. The balance of the load consisted of pinto beans and some empty sacks concealed by the layer of sacks filled with lima beans (III, 401-411, 415, 471-476).

The driver then obtained a new declaration from an export broker and made his delivery, together with an invoice in a sealed envelope. The customer opened it and it corresponded with the load that he had delivered (III, 412-413, 410). The driver thought that this was the only export declaration made out in the company office, the others being ordinarily prepared by their customs brokers (III, 415).

Following the testimony of the two United States customs officials that their records did not reveal the existence of export declarations covering the exports allegedly made, petitioner moved for the production of such records, which motion was sustained by the

court (III, 466-468). They were produced in seven boxes weighing approximately 400 pounds (IV, 567). However, it was explained to the court that the Bureau of Customs at Washington could not release export declarations of other companies for examination by their competitors without the written consent of the Secretary of Commerce (IV, 565-580).

At the court's suggestion, Counts 1 and 3 of the indictment, based on petitioner's allegedly false statement that these export declarations had been filed, were dismissed (IV, 621-622). However, the court held that petitioner was not entitled to any such sweeping discovery in connection with Counts 2 and 4. He stated that he would order the Government to produce any specific export declarations by the Casaus company, under any of its various trade names, and to any specific consignee, which petitioner might request, but would overrule the motion otherwise (IV, 577-578, 622, 626). Petitioner made no such requests.

3. After the testimony of Jiminez that eleven of the purported "landing receipts" had no counterpart in the official records of the appropriate office of the Mexican customs, petitioner asked leave to take depositions by interrogatory in Mexico to establish the official nature of the party making the certification and to prove that such certification was made in accordance with authorized practice (III, 436). The court ruled that there was no surprise and that the application was not timely, these matters having been in issue since the return of the indictment (III, 457-460).

ARGUMENT

1. Petitioner's false statement on which his conviction was based related to subject matter concerning

which he was under a legal obligation to give the Government truthful information. Under the Department of Agriculture regulations, which were embodied in petitioner's purchase agreement and which he understood, he was required, not only to export the commodities sold to him within sixty days of their purchase, but also to submit to the C.C.C. proof thereof within thirty days after each export shipment, which petitioner had failed to do (Supp. R. 29-30; Exs. 1, 4).

The question at issue in *United States* v. *Levin*, 133 F. Supp. 88 (D. Colo.), cited by petitioner—whether the general terms of 18 U.S.C. 1001 can be invoked to punish every false statement made to a Government investigator by a person under no obligation to give a statement in the first place—is not presented by this case. This prosecution is under 15 U.S.C. 714m, which requires that the false statement be made "for the purpose of influencing in any way the action of the Corporation" or for the purpose of obtaining a benefit under the Act. Here petitioner was under a duty to show that he had exported the beans. Under the terms of his agreement, it was a part of the consideration supporting the sale of the commodity at a greatly reduced price that the purchaser remove the surplus commodity from the domestic market and make due proof of his compliance. It was a proper inference by the jury that the purpose of such false statement was "to influence the action of the Corporation" in failing to demand that petitioner's company pay the domestic price for the lima beans, rather than the reduced price to get them off the domestic market, which additional payment would have been required had petitioner given a truthful statement on the subject. Such payment

would obviously have been quite substantial, as the purchases aggregated more than a million and a half pounds of beans.

Since, therefore, the evidence established a violation of the specific provisions of 15 U.S.C. 714m, the special rule of proof applicable to perjury cases does not pertain. *Todorow* v. *United States,* 173 F. 2d 439 (C.A. 9), certiorari denied, 337 U.S. 925; *Fisher* v. *United States,* 231 F. 2d 99 (C.A. 9). Actually, even under the test for perjury, the proof was more than ample; petitioner's conviction plainly does not rest "on the uncorroborated testimony of a single witness". *Weiler* v. *United States,* 323 U.S. 606, 608. While only one witness, Kennedy, testified directly to petitioner's making the statement in question that all C.C.C. beans had been exported, there were ample corroborating circumstances as to this, because petitioner maintained throughout the investigation that all such beans had been exported (V, 89-93) and again so asserted in his testimony during the trial (XI, 40). The falseness of the statement was established by the figures showing domestic sales from total available stocks, from the camouflaged shipment of a truck load of beans to Mexico, and from the customs records of both Mexico and the United States.

2. Under Rule 44 of the Federal Rules of Civil Procedure, made applicable to criminal proceedings by F. R. Crim. P., Rule 27, the non-existence of a record may be proved by the certificate of the officer having custody thereof, or his deputy, that he has made diligent search and found no such record to exist. The Government in this case went further and put on the stand two such deputies, who made oath that a search

had been made and who were subject to cross-examination.

The court properly refused to subject all of these voluminous confidential records to inspection. The court stated that it would compel the production of any particular export declarations named by petitioner in which his company was the consignor and for any specific consignee. If any such genuine export declarations had been in existence, there would obviously have been a record thereof in the files of the Casaus company, and they could have been requested explicitly, giving the dates and any other details which would facilitate their location. Petitioner made no such request. This case, therefore, bears no resemblance to *Jencks* v. *United States*, 353 U.S. 657, where this Court expressly reaffirmed the established principle that a demand for inspection must be limited to "specific documents" and must "not propose any broad or blind fishing expedition among documents possessed by the Government on the chance that something impeaching might turn up" (*id.*, p. 667).

3. The court acted properly, within its judicial discretion, in refusing to order the taking of depositions in Mexico during the trial to establish the authenticity of petitioner's eleven questioned "landing receipts". The genuineness of such documents had necessarily been in issue under the charges of the indictment, and the court properly ruled that the application was not timely and that there was no surprise. Cf. *Heflin* v. *United States*, 223 F. 2d 371, 375 (C.A. 5).

4. Petitioner's argument that matters outside the evidence reached the jury room is not supported by references to the record. We have been unable to find

anything in the record bearing on this point. What apparently occurred, according to the Government's brief on appeal to the Court of Appeals, was that during the jury's deliberations they asked for all the exhibits. By mistake, a number of invoices of the Casaus company, relating to other transactions, which had been offered by petitioner himself but excluded by the court as irrelevant, were delivered to the jury room. No suggestion is made as to how this may have prejudiced petitioner.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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